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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001235-MR

TATIANA DAVILA, INDIVIDUALLY,
AND AS ADMINISTRATRIX OF THE
ESTATE OF JOSE SALAZAR, DECEASED, AND THE
ESTATE OF MARIA SALAZAR, DECEASED

APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 05-CI-010368

KEITH A. GRAY, MELISSA HARVEY AND
ALLSTATE INSURANCE COMPANY

APPELLEES

OPINION AFFIRMING

** ** *

BEFORE: LAMBERT AND MOORE, JUDGES; BUCKINGHAM,¹ SENIOR
JUDGE.

MOORE, JUDGE: Tatiana Davila, as an individual and as the administratrix of
her parents' respective estates, appeals from a decision of the Jefferson Circuit

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Court in which the trial court granted summary judgment in the favor of her parents' insurance company, Allstate Insurance Company. On appeal, Davila argues KRS² 304.39-100, 304.39.110 and 304.20-020 required Allstate to pay uninsured motorists benefits in excess of her parents' policy limits. Finding no error, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In October 2005, Tatiana Davila's parents, Jose and Maria Salazar, were killed in an automobile accident. The Salazars were driving Davila's vehicle, which was insured by State Farm Insurance Company. While the Salazars were traveling southbound along Interstate 71 near Louisville, Kentucky, their vehicle was struck by a vehicle being driven by Keith A. Gray. At the time, Gray was driving a vehicle owned by Melissa Harvey; neither Harvey nor Gray had automobile liability insurance. After the Salazars' deaths, Davila was named administratrix of her parents' estates, and she, individually and as the administratrix of her parents' estates, sued Gray and Harvey in Jefferson Circuit Court.

Because both alleged tortfeasors were uninsured, Davila sought benefits under the uninsured motorist (UM) provision of her insurance policy with State Farm. Davila's insurance policy provided UM coverage in the amount of \$25,000.00 per person and \$50,000.00 per accident.³ Davila also sought recovery

² Kentucky Revised Statute.

³ This is the minimum coverage required by Kentucky law. Kentucky Revised Statute 304.39-110.

under her parents' insurance policy. At the time of their deaths, the Salazars were Florida residents with automobile insurance provided by Allstate. Because the Salazars were Florida residents, their policy was written in Florida. The Salazars' policy provided UM coverage in the amount of \$10,000.00 per person, \$20,000.00 per accident.⁴ In response to Davila's UM claim, her insurance company paid each estate \$25,000.00, and Allstate paid each estate \$10,000.00 per the Salazars' policy.

Even though Allstate paid the estates pursuant to the Salazars' policy, Davila filed an amended complaint adding Allstate as a defendant. In the amended complaint, Davila alleged that the Salazars had a policy with Allstate that was in effect at the time of the accident, and she averred that she had demanded that Allstate "provide uninsured motorists coverage benefits in accordance with Kentucky law," but that the company refused. Thus, Davila requested the trial court to determine the amount of UM benefits to which the Salazars' estates were entitled pursuant to their policy.

Not long after Davila added Allstate as a party, she moved the trial court for summary judgment against the insurance company. In her motion, Davila acknowledged that the Salazars' policy had originated in Florida and that it provided for \$10,000.00 per person, \$20,000.00 per accident, but she noted that this level of coverage was below the level of coverage required by Kentucky law. Citing KRS 304.39-100, 304.39-110 and 304.20.020, Davila noted that Kentucky

⁴ This is the minimum coverage required by Florida law.

law requires minimum UM coverage of \$25,000.00 per person and \$50,000.00 per accident. Additionally, she cited *Dairyland Insurance Company v. Assigned Claims Plan*, 666 S.W.2d 746 (Ky. 1984) and argued that the holding of that case mandated that a foreign insurance company doing business in Kentucky is required to honor Kentucky law regarding the minimum amount of UM coverage. Therefore, Davila argued that, pursuant to *Dairyland* and the cited statutes, Allstate was required to pay \$25,000.00 per estate in UM benefits regardless of the limits set forth in the Salazars' policy.

After Davila filed her motion for summary judgment, Allstate responded and filed its own motion for summary judgment arguing the opposite. Ultimately, the trial court denied Davila's motion and granted summary judgment in Allstate's favor.

II. STANDARD OF REVIEW

When considering a motion for summary judgment, the trial court must view the record in a light most favorable to the party opposing the motion and must resolve all doubts in his favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Furthermore, the trial court should not grant summary judgment if any issue of material fact exists. *Id.* On appellate review, we must determine whether the trial court correctly found that no genuine issue of material fact exists and that, as a matter of law, the moving party was entitled to judgment in its favor. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App.

1996). Because findings of fact are not in issue, we review the trial court's decision *de novo*. *Id.*

III. ANALYSIS

On appeal, Davila argues that *Dairyland*, 666 S.W.2d 746, holds that KRS 304.39-100, 304.39-110 and 304.20-020 require coverage provided by foreign insurance companies doing business in the Commonwealth to provide the same statutorily mandated coverage as required by in-state companies. Davila avers that, in *Dairyland*, the Supreme Court held that if an injured party is an insured from another state, has a foreign insurance policy and is involved in an accident in Kentucky, then KRS 304.39-100 requires that the insured's foreign policy must provide the minimum security for tort liability as required by KRS 304.39-110. Applying the holding of *Dairyland* to this case, Davila reasons that if a foreign insured with a foreign policy is involved in an accident in Kentucky and if the insured's foreign insurance company does business in Kentucky, the foreign company must honor the statutory minimum UM coverage of \$25,000.00 per person. Consequently, according to Davila, because Allstate does business in Kentucky, it must provide the minimum UM coverage as required by KRS 304.39.110 and 304.20-020 even though the policy it issued to the Salazars was a Florida policy and the Salazars were Florida residents.

The resolution of this case turns upon whether KRS 304.39-100 applies to the UM coverage found in foreign insurance policies. The relevant part of this statute reads

[a]n insurer authorized to transact or transacting business in this Commonwealth shall file with the executive director of insurance as a condition of its continued transaction of business within this Commonwealth a form approved by the executive director of insurance declaring that in any contract of liability insurance for injury, wherever issued, covering the ownership, maintenance or use of a motor vehicle other than motorcycles while the vehicle is in this Commonwealth shall be deemed to provide the basic reparation benefits coverage and minimum security for tort liabilities required by this subtitle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverage.

KRS 304.39-100(2). Davila claims that the case that appropriately interprets this statute is *Dairyland*, 666 S.W.2d 746, while Allstate claims that the case that most appropriately construes this statute is *Bonnlander v. Leader National Insurance Company*, 949 S.W.2d 618 (Ky. App. 1997).

In *Dairyland*, an insured was injured in Kentucky while a passenger in an uninsured vehicle. 666 S.W.2d. at 747. The insured was a resident of Tennessee with a Tennessee automobile policy provided by Dairyland Insurance Company. *Id.* The insured sought basic reparation benefits (BRB) from Dairyland pursuant to his policy but the insurance company denied the claim. *Id.* As a result, the insured sought basic reparation benefits through the Assigned Claims Plan. *Id.* The Plan assigned the insured's claim to Home Insurance Company. *Id.* Home Insurance paid the insured's BRB claim and sought reimbursement from Dairyland. *Id.*

The Supreme Court held that KRS 304.39-110(2) requires that all insurance contracts will be deemed to provide the minimum basic reparation benefits required by this subtitle, KRS Chapter 304.39, and that this subtitle requires an injured party's insurance company to pay BRB. *Id.* at 748. Additionally, the high Court reasoned KRS 304.39-100(2) requires a foreign insurance company authorized to transact business in the Commonwealth to provide basic reparation benefits as required by KRS Chapter 304.39. *Id.* In other words, a foreign insurance company doing business in the Commonwealth must provide the same minimum basic reparation benefits as an in-state company, even if the policy in question is foreign, as long as the accident that injured the foreign company's insured occurred in Kentucky. *Id.*

In *Bonnlander*, 949 S.W.2d 618, several insureds from Indiana were injured in a vehicular accident in the Commonwealth. *Id.* at 619. These insureds had automobile policies written in Indiana and provided by foreign insurance companies that also did business in the Commonwealth. *Id.* In *Bonnlander*, the Appellants argued that KRS 304.39.100(2) required the foreign insurance companies to provide the same UIM coverage as required by Kentucky law even though the insureds and the policies in question were all from Indiana. *Id.* at 620. According to the *Bonnlander* Court,

[a]ppellants further maintain that because appellee insurance companies were authorized to do business in the state of Kentucky and each filed a "Declaration of Compliance with No-fault Insurance Requirements," they must provide underinsured motorists' coverage to

appellants pursuant to Kentucky law. *The declarations filed by appellees pursuant to KRS 304.39-100(2) only require that appellees provide basic reparations benefits and the statutory minimum tort liability insurance on any covered vehicle while it is in the state of Kentucky. There is no requirement that they provide underinsured motorists coverage to their insureds.* This is in keeping with the public policy of Kentucky's Motor Vehicle Reparations Act, which is to protect Kentucky residents from out-of-state vehicles which come into Kentucky and cause accidents and have inadequate or no insurance. It follows that basic reparations benefits and minimum tort liability insurance go with the vehicle, while underinsured motorists coverage is personal to the insured.

Id. at 620-621 (emphasis added). Consequently, the *Bonnlander* Court held that KRS 304.39-100(2) did not require a foreign insurance company doing business in the Commonwealth to provide the minimum underinsured motorist coverage that is required by Kentucky law in its foreign policies. *Id.*

Although it would not be completely unreasonable to apply the analysis found in *Dairyland* to the present case, that case is clearly distinguishable from the one at hand because the *Dairyland* Court was interpreting KRS 304.39-110 regarding that statute's applicability to basic reparation benefits not uninsured motorist coverage. Furthermore, we conclude that the reasoning found in *Dairyland* does not apply because the language in KRS 304.39-110(2) specifically mentions basic reparation benefits but does not mention uninsured motorist coverage.

Instead of applying *Dairyland*, we find the analysis in *Bonnlander* to be more persuasive. The Supreme Court has recognized the similarity between

UM and UIM coverage and has commented that it applies the law and policy regarding UM coverage to those cases involving UIM coverage due to this similarity. *Dupin v. Adkins*, 17 S.W.3d 538, 540-541 (Ky. App. 2000). The Supreme Court has consistently held that the difference between the uninsured and underinsured statutes is more illusory than real. *Allstate Insurance Company v. Dicke*, 862 S.W.2d 327, 329 (Ky. 1993); *see also Dupin*, 17 S.W.3d at 540-541; *James v. James*, 25 S.W.3d 110, 114 (Ky. 2000). Taking this case law into consideration, we find the *Bonnlander* Court's logic and reasoning applies equally as well to UM coverage, even though the *Bonnlander* Court addressed UIM coverage, due to the long-recognized similarity between the two types of coverage. So, applying the rationale in *Bonnlander*, we conclude that KRS 304.39-110(2) does not apply to UM coverage; thus, a foreign insurance company that is doing business in the Commonwealth is not required to provide the minimum UM coverage as required by Kentucky law in said insurance company's foreign policies. However, we note that a foreign insurance company doing business here must still provide the statutorily required minimum UM coverage regarding policies written in the Commonwealth. Thus, the trial court did not err when it granted summary judgment to Allstate.

Consequently, because KRS 304.39-100(2) does not apply to the Salazars' Florida policy, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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